

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On its own Motion	:	Docket No. 13-0458
	:	
Adoption of 83 Ill. Adm. Code 556	:	

REPLY BRIEF ON EXCEPTIONS OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION

JOHN C. FEELEY
KELLY A. TURNER
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
jfeeley@icc.illinois.gov
kturner@icc.illinois.gov

October 16, 2013

*Counsel for the Staff of the
Illinois Commerce Commission*

Table of Contents

	<u>Page</u>
I. ARGUMENT	2
A. Section 556.10.....	2
1. Definition of Accumulated Deferred Income Taxes	2
a. Response to Ameren- First Exception	2
b. Response to Peoples – Exception 1	2
2. Definition of Depreciation Expense	3
a. Response to Peoples – Exception 2	3
3. Definition of Difficult to Locate Main	3
a. Response to Peoples – Exception 3 and Exception 3 Alternative.....	3
4. Definition of Difficult to Locate Service Pipe.....	4
a. Response to Peoples – Exception 3 and Exceptions 3 Alternative	4
5. Definition of Reconciliation Year	5
a. Response to Peoples –Exception 4	5
B. Section 556.60.....	6
1. Response to Ameren – Second Exception.....	6
C. Section 556.61.....	7
1. Response to Peoples – Exception 5	7
D. Section 556.100.....	7
1. Response to Ameren – Third Exception.....	7
E. Section 556.100(d)(2)	8
1. Response to Peoples – Exception 4	8
II. CONCLUSION.....	8

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	:	
on its own motion	:	Docket No. 13-0458
	:	
Adoption of 83 Ill. Adm. Code 556	:	

**REPLY BRIEF ON EXCEPTIONS OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, pursuant to Section 200.830 of the Rules of Practice (83 Ill. Adm. Code 200.830) of the Illinois Commerce Commission (“Commission”), respectfully submits its Reply Brief on Exceptions to Exceptions filed on October 9, 2013 to the Proposed Order (“Proposed Order” or “PO”) issued by the Administrative Law Judge (“ALJ”) on October 3, 2013 in the above-captioned matter.

The PO was issued following the filing of verified initial comments (“Initial Comments”) and verified reply comments (“Reply Comments”) by Staff, Ameren Illinois Company d/b/a Ameren Illinois (“Ameren”), the People of the State of Illinois by Attorney General Lisa Madigan (“AG”), Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor Gas”), and the Peoples Gas Light and Coke Company (“Peoples”).

Only Staff, Ameren and Peoples filed briefs on exception (“BOE”) taking exception to the PO. Some of Ameren’s and Peoples’ exceptions to the PO are acceptable to Staff, while others are not. The only exception to the PO which has

corresponding changes Part 556, Attachment A to the PO, that the Commission should accept is Peoples' Alternative 3. Peoples' Alternative 3 requires striking the phrase "conductive electronic" from the definitions of "Difficult to locate main" and "Difficult to locate service pipe." Staff's reply exceptions follow.

I. ARGUMENT

A. Section 556.10

1. Definition of Accumulated Deferred Income Taxes

a. Response to Ameren- First Exception

Ameren did not contest or take exception to the PO's rejection of the proposal to add a new defined term "Accumulated Deferred Income Taxes" to the definition section of the rule. Ameren did recommend that for the sake of clarity the Commission Analysis and Conclusion Section should be revised to set forth what it understood as the PO's reasoning for rejecting Ameren's proposed definition: that "all utilities should continuously comply with all IRS rules and regulations." (Ameren BOE, 2.)

Staff does not object to Ameren's First Exception.

b. Response to Peoples – Exception 1

Peoples has withdrawn its proposal to add a definition of Accumulated Deferred Income Tax ("ADIT") (Peoples BOE, 2), but takes exception to the PO for not providing a more expansive explanation for why the PO agrees with Staff that there is no need for a definition of "Accumulated Deferred Income Taxes." (PO, 3.) Peoples proposes alternative language addressing its concern.

Staff does not object to Peoples' alternative language set forth in Exception 1, Peoples BOE, Attachment A.

2. Definition of Depreciation Expense

a. Response to Peoples – Exception 2

Peoples supports the PO's conclusion rejecting Ameren's proposed additions to the definition of Depreciation Expense. However, Peoples takes exception to the PO for not including a discussion of Peoples' position on the issue. Peoples proposes (Peoples Exception 2) that the final order include a discussion of Peoples' position on the issue. (Peoples BOE, 3.)

Staff does not object to Peoples Exception 2 and the proposed language changes to the order.

3. Definition of Difficult to Locate Main

a. Response to Peoples – Exception 3 and Exception 3 Alternative

In its Exceptions, Peoples notes that the PO accepted Ameren's change to the definition of Difficult to Locate Main which added "conductive electronic" to the definition modifying "locating signal". (Peoples BOE, 3.) While Peoples took no position on Ameren's change to the definition, it argues in its BOE that the law which added Section 9-220.3 also added new section 5-111 which addresses natural gas utility reporting requirements. Subsection (b)(5) of Section 5-111 requires natural gas utilities to report "the number of difficult to locate services replaced." 220 ILCS 5/5-111(b)(5). Peoples requests either that (1) the Order clarify that the definition in Part 556 is limited to Part 556 and does not govern reporting under Section 5-111 (Exception 3) or in the alternative (2) that the phrase "conductive electronic" be deleted from the definition in Part 556 (Exception 3 Alternative). (Peoples BOE, 3-4)

Staff does not support Peoples Exception 3, but does support Exception 3 Alternative. Given that Sections 5-111 and 9-220.3 were passed together and are both

part of the Illinois Public Utilities Act (“Act”) they should be interpreted in a harmonious manner. It is well established in Illinois that related statutes should be construed in a harmonious manner and in a manner that advances, not defeats, the legislative intent. See, Knolls Condominium Ass’n v. Harms, 202 Ill.2d 450, 458 (2002). Peoples Exception 3 would in effect adopt a definition for the phrase “difficult to locate” which appears in both sections of the Act, but having that definition only apply to one of the sections would result in disharmony. Accordingly, Staff objects to Peoples Exception 3.

With regard to Peoples 3 Alternative, which is to delete the phrase “conductive electronic” from the definition, Staff does not object. Rather, Staff supports Peoples 3 Alternative, since it is now apparent to Staff based upon Peoples Exceptions that the concept of a conductive electronic locating signal is one way to locate facilities but not the only way. Accordingly, consistent with Peoples Exception 3, the phrase “conductive electronic” should be stricken from the definition.¹

4. Definition of Difficult to Locate Service Pipe

a. Response to Peoples – Exception 3 and Exceptions 3 Alternative

Similarly to the definition for Difficult to Locate Main, Peoples, in its Exceptions, notes that the PO accepted Ameren’s change to the definition of Difficult to Locate Service Pipe which added “conductive electronic signal” to the definition. (Peoples BOE, 3.) While Peoples took no position on Ameren’s change to the definition, it argues in its BOE that the law which added Section 9-220.3 also added new Section 5-111 which addresses natural gas utility reporting requirements. Subsection (b)(5) of Section 5-111 requires natural gas utilities to report “the number of difficult to locate services

¹ Peoples Exception 3 Alternative requires a change to Part 556 attached to the PO as Attachment A.

replaced.” 220 ILCS 5/5-111(b)(5). Peoples requests either that (1) the Order clarify that the definition in Part 556 is limited to Part 556 and does not govern reporting under Section 5-111 (Exception 3) or in the alternative (2) that the word “conductive electronic” be deleted from the definition in Part 556 (Exception 3 Alternative). (Peoples BOE, 3-4.)

For the same reasons as set forth above with respect to the definition of Difficult to Locate Main, Staff does not support Peoples Exception 3, but Staff does support Peoples’ Exception 3 Alternative. Accordingly, Peoples’ Exception 3 should be rejected. Consistent with Peoples’ Exception Alternative 3, the phrase “conductive electronic” should be deleted from the definition set forth in Section 556.10.²

5. Definition of Reconciliation Year

a. Response to Peoples –Exception 4

Peoples takes exception to the PO for rejecting Peoples’ definition of “reconciliation year.”(Peoples BOE, 4.) Peoples argues that its proposed definition for “reconciliation year” is both consistent with the Act and would not complicate the reconciliation process. (Id. at 4-5.) Staff in its Reply Comments showed how Peoples definition is inconsistent with the Act. (Staff Reply, 7-8.) Despite the fact that Section 9-220.3 calls for a calendar year reconciliation (220 ILCS 5/9-220.3(e)(2), Peoples insists that reconciling a calendar year’s worth of costs with March to February revenues is a calendar year reconciliation. (Peoples BOE, 4.) As Staff’s Reply Comments indicated, there is no language in Section 9-220.3 that provides for a reconciliation of calendar year costs with a hybrid years worth of revenues. (Staff Reply Comments, 8.) In addition, Ameren in its Reply Comments noted that it had doubts whether Peoples’ proposal was consistent with the Act. (Ameren Reply Comments, 7.)

² Peoples’ Exception 3 Alternative requires a change to Part 556 attached to the PO as Attachment A.

With regard to the issue of Peoples' proposal complicating the process, Staff pointed out in its Reply Comments that Peoples proposal would result in the Commission not being able to rely upon annual revenues reported most recently in audited financial statements. (Staff Reply Comments, 9.) Staff also pointed out that Peoples' proposal would complicate the process in determining whether the surcharge has exceeded the statutory 5.50% cap. 220 ILCS 5/9-220.3(g). (Id.) Finally, one of the utilities, Ameren, pointed out in its Reply Comments, that Peoples' proposal may result in unintended and unnecessary complications in preparing for the annual reconciliation proceedings. (Ameren Reply Comments, 6-7.) Ameren also pointed out that since each reconciliation is required to be filed no later than March 20 of each year, Peoples' proposal to use revenues from the February billing period would make it difficult and burdensome to incorporate those February billings less than three weeks later by the March 20 deadline. (Id. at 7.) Based upon all of the above, Peoples Exception 4 should be rejected.

B. Section 556.60

1. Response to Ameren – Second Exception

Both Staff and Ameren took exception to the PO concerning Section 556.60. Both Staff and Ameren noted the inconsistency in the Commission Analysis and Conclusion section of the PO. (Staff BOE, 2-3; Ameren BOE, 2-3.) Both Staff and Ameren assumed that the PO intended to reject Ameren's proposed definition for Accumulated Deferred Income Taxes, as a result the phrase "accumulated deferred income taxes" did not require capitalization of the first letters in the words: "accumulated," "deferred," "income" and "taxes." Staff is indifferent as to whether the Commission adopts Staff's proposal or Ameren's proposal for language changes to clarify the Commissions Analysis and Conclusion section to indicate that the

Commission accepted the common changes proposed by Ameren and Peoples but rejected the additional capitalization proposed by Ameren. Either language change to the PO is acceptable to Staff.

C. Section 556.61

1. Response to Peoples – Exception 5

Peoples does not take exception to the PO on the rejection of Nicor Gas' proposed new section to allow a per customer charge as an alternative to a percentage of base rate revenue charge. (Peoples BOE, 5-6.) However, Peoples takes exception to the PO for not including a discussion of Peoples' position on this issue.

Staff does not object to the Order including Peoples' position on the issue set forth in Peoples BOE, Attachment A, at page 6.³

D. Section 556.100

1. Response to Ameren – Third Exception

Ameren's Third Exception is similar to Ameren's Second Exception. Ameren noted an inconsistency between the PO's rejection of the proposed definition for ActNetQIP regarding the capitalization of the first letter in the words: "accumulated", "deferred", "income" and "taxes" (Ameren BOE, 4-5.) Staff in its review of the PO did not note this inconsistency in the PO's discussion of Section 556.100, but Staff does agree that such an inconsistency exists in the PO and that the PO should be modified as Ameren proposes.

Staff agrees with the language changes proposed by Ameren in its Third Exception.

³ It is not clear to Staff, but it appears that the proposed language change related to Peoples Exception 5 may be misidentified in Attachment A as Exception 4 (Peoples BOE, Attachment A, 5-6).

E. Section 556.100(d)(2)

1. Response to Peoples – Exception 4

Staff's response to Peoples Exception 4 is set forth above under heading A, Section 556.10, subheading 5, Definition of Reconciliation Year.

II. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations in this docket.

Respectfully submitted,

JOHN C. FEELEY
KELLY A. TURNER
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
jfeeley@icc.illinois.gov
kturner@icc.illinois.gov

October 16, 2013

*Counsel for the Staff of the
Illinois Commerce Commission*